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SUMMARY

This Petition to Enlarge Issues documents an unmistakable pattern of disregard for the Commission's Rules on the part of Robert G. Casagrande. Casagrande has failed to report significant information required by the Commission's application form and by Section 1.65 of the Rules. Furthermore, Casagrande, through corporations of which he is an officer, director and shareholder, has repeatedly violated the Commission's Rules regarding the operation of broadcast stations. In several instances, the violations are both serious and repeated. Furthermore, M.M. Group, Inc., of which Casagrande is President and a 50% stockholder, made a blatant misrepresentation to the Commission in an effort to obtain immediate grant of a modification application, which grant was necessary to return Station WCFL(FM), Morris, Illinois, to the air. This petition raises substantial and material questions as to whether Casagrande has the requisite character qualifications, truthfulness and reliability, to be a Commission licensee.

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Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION

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7. Does the applicant, any party to the application or any non-party equity owner in the applicant have, or have they had, any interest in:

...

(b) a broadcast application which has been dismissed with prejudice by the Commission?

...

(e) a broadcast application in any pending or concluded Commission proceeding which left unresolved character issues against the applicant?

Casagrande's response to Questions 7(b) and (e) were patently false.

1. Metro Broadcasting, Inc.

Casagrande was Treasurer, director and a 16.6% shareholder of Metro Broadcasting, Inc. ("Metro"), which filed a construction permit application mutually exclusive with the application of Mid-Ohio Communications, Inc. for renewal of the license of Station WBBY(FM), Westerville, Ohio. Initial Decision of Administrative Law Judge John H. Conlin in BC Docket Nos. 82-282 and 82-293, Findings, ¶26 (released September 16, 1983) (portions included as Exhibit B hereto). Indeed, Metro initially prevailed over Mid-Ohio. Id., Conclusions, ¶17. The Review Board, however, remanded the case for further hearing on two new issues, including the following with respect to Metro:

2(b) To determine whether Metro Broadcasting, Inc. failed to submit complete and accurate information regarding its corporate documents, stock ownership and financial qualifications in violation of the Commission's filing, reporting and candor, requirements and the effect thereof on Metro's basic or comparative qualifications.

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in the corporation. See Exhibit E hereto. More importantly, Casagrande failed to report that Crosschannels' application was dismissed with prejudice. Memorandum Opinion and Order, FCC 91M-2204 (released July 18, 1991) (included as Exhibit F hereto).

Obviously, Casagrande had an "interest" in Crosschannels' application. Accordingly, he was obligated to report the dismissal of that Englewood application in his Richwood application.

3. Clear River Communications, Inc.

Also absent from Casagrande's Richwood application is any reference to Clear River Communications, Inc. ("Clear River"), a corporation of which Mr. Casagrande was an officer, director and 50% owner. See Exhibit E hereto. Clear River was an applicant for a new FM station at St. Mary's, Ohio (BPH-880505PQ). That application, however, was dismissed on January 31, 1989, as a result of a failure to prosecute. Specifically, Clear River did not respond to a letter from the Commission dated September 14, 1988, which directed that a corrected coverage map be filed. See Exhibit G hereto. A petition for reconsideration of the dismissal of the application was denied July 23, 1992. See Exhibit H hereto. Casagrande should have reported the dismissal of the St. Mary's application in his Richwood application.⁴

⁴ Casagrande also did not note in his Richwood application that Clear River's application for a new FM station at Ada, Ohio was returned by the Commission upon denial of Clear River's short spacing waiver request. See Exhibit I hereto.

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B. Section 1.65 Violations

[REDACTED]

2. Tel-Lease, Inc.

Casagrande also failed to report the filing and grant of the applications for assignment of Stations WWHT(FM), Marysville, Ohio, and WNJR(AM) and WTLT(FM), Circleville, Ohio. See Exhibits J & K hereto. Specifically, the applications sought Commission consent to the pro forma assignment of Station WWHT from Riggs-Hutchinson & Associates, Inc. ("Riggs-Hutchinson") and of Stations WNRJ and WTLT from M.M. Group to Tel-Lease, of which Casagrande and Mark Litton each presently own 50%.⁵ According to the Commission's records, the applications were filed March 16, 1993 and granted April 6, 1993.

Of particular significant is the fact the applications include an option agreement for Casagrande to acquire Litton's stock and thus become the sole owner of Tel-Lease. The agreement provides that if Casagrande's personal guarantee is necessary in order for Tel-Lease to obtain financing, Casagrande may acquire Litton's Tel-Lease stock for \$100.00. Obviously, the existence of such an option, as well as the pendency of the assignment applications, should have been reported in Casagrande's Richwood application. They were not, even though the option agreement was signed two and a-half months ago.⁶

⁵ Although the assignor of the Marysville station is identified as Riggs-Hutchinson, some confusion exists as to whether the licensee of WWHT is Riggs-Hutchinson or M.M. Group. Casagrande reports in his Richwood application that M.M. Group is the licensee. As will be discussed below, no ownership report for WWHT has been filed since May 10, 1990. That report indicated that Riggs-Hutchinson was the licensee and that Litton and Casagrande each owned 24.5% of that corporation. See Exhibit JJ hereto.

⁶ Casagrande's first acknowledgement in this proceeding as to the existence of the applications and the option was made on June 1, 1993, when his counsel included the applications among the documents produced pursuant to Section 1.325(c)(1) of the Rules, the Standard Document Production Order.

3. Fidelity Bank v. M.M. Group, Inc.

On April 13, 1993, Fidelity Bank, National Association, filed a civil action in United States District Court for the Southern District of Ohio against M.M. Group and Riggs-Hutchinson (Case No. C2-93-0393). Fidelity Bank sought a judgment in the amount of \$8,658,287.83 (plus interest, attorney's fees and costs), and the appointment of a federal receiver for M.M. Group. See Exhibit L hereto. On the same day the action was filed, with the consent of all parties, the court (a) entered a judgment in favor of Fidelity Bank against M.M. Group and Riggs-Hutchinson for the above-referenced amount (see Exhibit M hereto) and (b) appointed Robert J. Maccini as receiver of M.M. Group (see Exhibit N hereto).

One can dare say that the entry of a judgment for more than \$8.6 million against a corporation of which an individual applicant is a 50% owner is a matter, in the words of Section 1.65 of the Rules, "which may be of decisional significance." Yet, Casagrande has failed to amend his application to report the entry of the judgment or the appointment of the receiver.⁷

4. Haley, Bader & Potts et al. v. M.M. Group, Inc. et al.

On April 15, 1990, Haley, Bader & Potts and Lee W. Shubert⁸ filed a civil action in United States District Court for the Southern District of Ohio against M.M. Group, Riggs-Hutchinson, Casagrande and Litton. The complaint (Exhibit O hereto) seeks a judgment against



⁷ The only action taken thus far was his counsel's production on June 1, 1993, of a copy of the application for assignment of Stations WCSJ(AM) and WCFL(FM), Morris, Illinois, and WQTL(FM), Ottawa, Ohio, from M.M. Group to Robert J. Maccini, Receiver. The application was filed with the Commission May 12, 1993.

⁸ Haley, Bader & Potts is a Washington-area communications law firm. Mr. Shubert is a partner in that firm.

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the defendants, including Casagrande personally, for \$288,393.64 for legal services rendered. Furthermore, the plaintiffs allege that the purpose of the assignment of the Circleville and Marysville stations to Tel-Lease is to defraud creditors and that the defendants, including Casagrande personally, have acted with malice and an intent to defraud the plaintiffs. The plaintiffs seek punitive damages in the amount of \$865,000.

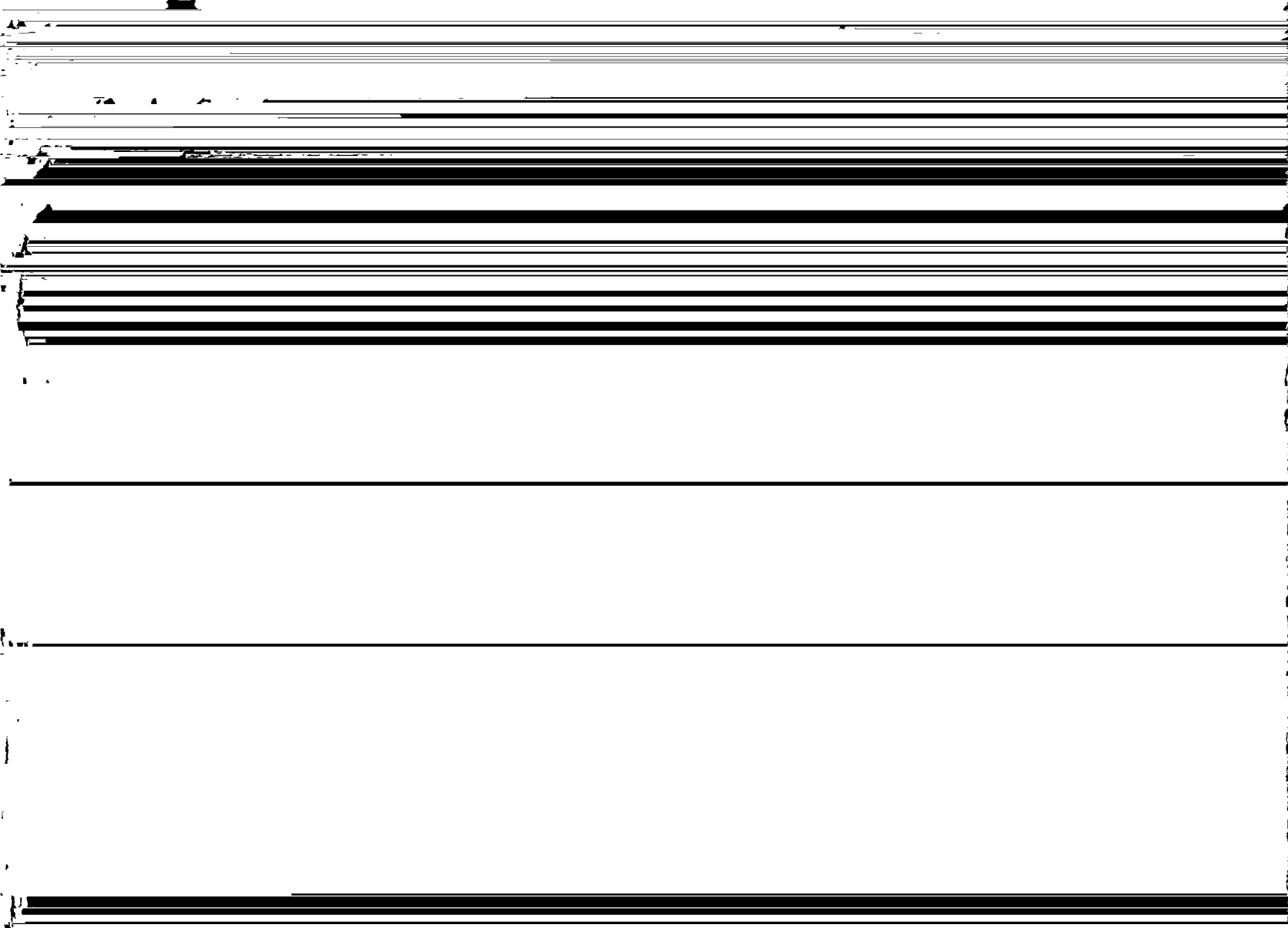
On April 19, an order of attachment was entered by the court which prohibited the defendants from assigning "their license and all property rights" in the Circleville and Marysville stations to Tel-Lease or any other entity or person. See Exhibit P hereto.



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applicant's failure to submit complete and accurate information to the Commission. The Commission has determined that inquiry into reporting violations is justified where a prima facie showing is made that the unreported matters in question are of decisional significance, an intent to conceal is present, or a pattern of repeated violations or significant carelessness is shown. E.g., Merrimack Valley Broadcasting, Inc., 99 FCC 2d 680, 683 n. 9 (1984). A significant failure to report required information invariably raises a question of intent. Barry Skidelsky, 70 RR 2d 722, 726 (Rev. Bd.) review denied, 7 FCC Rcd 5577 (1992).

Here, not only are there significant failures to report required information, but an unmistakable pattern of repeated violations and carelessness. Under the circumstances, a



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A. WCFL(FM), Morris, Illinois

1. Unauthorized Operation, Overpower Operation and Other Rule Violations

M.M. Group acquired Stations WCSJ(AM) and WCFL(FM), Morris, Illinois, on December 1, 1989. See Exhibit Q hereto. A construction permit for use of a directional

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Section 73.1560(b): Failure to maintain the transmitter output power of the

On July 25, 1990, M.M. Group's counsel requested special temporary authority for WCFL to operate for 90 days with the facilities specified in its construction permit, but with the ERP reduced to 11 kilowatts. The STA request stated that the licensee had been conducting field measurements to "prove" the new antenna but had encountered difficulties in compiling the data for the proof and completing the information necessary for the license application.

In a letter dated March 1, 1991, the FCC noted that neither a license application nor a further STA request had been received. Because the 90-day STA period requested had long since passed, the Commission assumed WCFL had resumed operation with its previously licensed facilities. Accordingly, the Commission dismissed the STA request. The Commission further stated that if WCFL was not operating pursuant to its licensed facilities, it must notify the Commission in writing within five days and "provide a detailed explanation why WCFL(FM) is not operating pursuant to its licensed facilities" or why the application for license has not been filed. See Exhibit W.

In response, M.M. Group first asked for reconsideration of the dismissal of its STA and then filed a new STA request. On March 28, 1991, the Commission granted an STA for Station WCFL to operate with the facilities specified in the station's construction permit except with an ERP reduced to 11 kilowatts.

The STA expired on April 26, 1991. Over the next several months, three extension requests from M.M. Group followed. The last STA granted expired January 2, 1992. On that date, M.M. Group requested a further extension.

The Commission responded in a January 24, 1992 letter (Exhibit Y hereto). The Commission's letter reported that WCFL's facilities had been once again inspected by the FCC's

Field Operations Bureau. That inspection, on January 16, 1992, revealed that WCFL was in violation of the STA. Specifically, the inspector found:

1. WCFL was operating with 23.83 kilowatts, well in excess of the 11 kilowatts authorized for the STA.
2. WCFL was operating with an omni-directional antenna, rather than the directional pattern authorized.
3. WCFL failed to cease operation by remote control when the remote control equipment became inoperative.

The letter further noted that the Commission had received complaints of interference from other broadcast stations. In light of this information, the Commission denied the STA extension request, cancelled the STA, and ordered WCFL to cease STA operation immediately. *Id.*

2. Misrepresentations

The Commission's letter finally sparked action from M.M. Group. On January 31, 1992, it filed a license application and a request for program test authority.

In a letter dated February 4, 1992, the Commission noted that the antenna pattern of the facilities constructed exceeded the pattern authorized in the construction permit. For example, along the 280 degree true azimuth, the authorized ERP was 38.9 kilowatts, but the license application revealed that the ERP was 48.6 kilowatts -- 9.7 kilowatts higher than authorized. Accordingly, M.M. Group's request for program test authority was denied. *See* Exhibit Z hereto.

In response, M.M. Group filed an application the following day to modify the station's construction permit to specify the facilities constructed. As part of its effort to secure an immediate grant of the modification application, M.M. Group filed an amendment on February

7, 1992, to demonstrate compliance with the Commission's radio frequency radiation requirements. The amendment included the following statement:

"The tower is secured by a fence and/or anti-climb devices which effectively prevent the public from having access to the tower. Warning signs are posted to warn workers of the potential hazard on the tower near the antenna."

See Exhibit AA hereto. The Commission thereafter granted the construction permit and program test authority. See Exhibit BB hereto.

Contrary to the representations in the February 7 amendment, there is neither a fence nor an anti-climb device on the WCFL tower. Included as Exhibit CC hereto are photographs of the WCFL tower taken June 2, 1993. As the photographs depict, nothing prevents an individual from walking to the tower base and climbing the tower. Moreover, no warning signs are posted in the vicinity of the tower.

M.M. Group's statement that the tower was secured by "a fence and/or anti-climb devices" was nothing but a blatant misrepresentation, made in order to secure a prompt grant of the modification application and return WCFL to the air.

In sum, M.M. Group's actions with respect to WCFL have been outrageous. M.M. Group (a) began operation of the modified facilities without authorization, (b) violated numerous Commission rules, (c) failed to respond to a Notice of Apparent Liability, (d) violated the terms of its STA by operating WCFL at more than twice the permitted power, (e) constructed facilities at variance with its construction permit, and (f) made a blatant misrepresentation in order to secure grant of a modification application.

As demonstrated below, M.M. Group's outrageous behavior has not been limited to WCFL.

B. WNRJ(AM), Circleville, Ohio**1. Overpower Operation.**

Including as Exhibit DD hereto is an engineering report from Mr. Virgil Royer, a consulting engineer with the firm of E. Harold Munn, Jr. & Associates, Inc. Mr. Royer's report, supported by a declaration under penalty of perjury, includes the results of his partial proof of performance of the antenna system of WNRJ, Circleville, Ohio. WNRJ is authorized to operate on 1540 kHz daytime only with a four-tower antenna system. On March 9 and 10, 1993, Mr. Royer took measurements at the monitor points specified in the WNRJ license. At each monitor point, the authorized power limits were exceeded. Mr. Royer made two more sets of monitor point measurements on May 28, 1993. None of the monitor point readings fell within the specified limits set forth in the WNRJ license. Indeed, Mr. Royer notes that his May 28, 1993 observations indicate "gross deviations at the monitor points." He also notes that the excessive radiation on the bearings 318 degrees, 352 degrees and 023 degrees spans the arc in the direction of the Columbus, Ohio, metropolitan area.

Mr. Royer's report documents yet another instance in which M.M. Group, of which Casagrande is President, has chosen to operate a station without regard to the power limits established by the FCC.

C. WWHT(FM), Marysville, Ohio**1. Section 73.317(b)**

Mr. Royer also has made certain measurements regarding Station WWHT(FM), Marysville, Ohio. On three separate occasions, he checked the occupied band width of Station WWHT to determine if the station was operating in conformance with the requirements of

Section 73.317. On all three occasions, the station was found to be in violation of that rule. Measurements were taken September 11, 1992, March 10, 1993, and May 27, 1993. Based on the data, Mr. Royer concludes it is obvious that Station WWHT has been operated with overmodulation on a consistent basis in contravention of Section 73.317(b). See Exhibit EE

Commission's files reflects, is situated well beyond the WWHT city-grade contour.⁹ See Exhibit HH hereto.

The foregoing facts indicate that Station WWHT is in violation of Section 73.1125(a) of the Commission's Rules, which requires each station to have a main studio within its principal community contour.

The Commission takes violations of Section 73.1125(a) seriously. For example, the Commission recently issued a Notice of Apparent Liability for \$20,000 for the violation of the main studio rule. Masada, Ltd., DA93-538 (Chief, Mass Media Bureau, released May 14, 1993). Here, the failure of Casagrande to maintain a main studio for WWHT within the station's principal city contour raises a fundamental question as to Casagrande's fitness to be a Commission licensee, particularly in light of numerous other rule violations detailed herein.

Moreover, this is not the first instance in which a Casagrande station failed to maintain a proper main studio. Casagrande's Integration and Diversification Statement reflects that he was a co-owner and general manager of Station WZZT(FM), Johnstown, Ohio from 1986 to 1988. According to FCC records, the Commission's Field Operations Bureau inspected the facilities of the Johnstown station on September 23, 1986, and cited the licensee, Black River Broadcasting Co., Inc., for relocating the station's main studio to Columbus, Ohio, outside of the station's community of license in violation of Section 73.1125, as it then existed. See

⁹ Counsel for Ms. Scantland has been informally advised that the studios of WWHT are located at 6555 Busch Boulevard, Suite 209, Columbus, Ohio. Columbus is farther outside the WWHT city-grade contour than Dublin.

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js required to be filed. A licensee with a current and unamended Ownership Report on file may

Section 73.3526 of the Commission's Rules, the public inspection file rule, specifies numerous categories of documents to be kept in the station's public inspection file, among which are annual employment reports, Ownership Reports and certifications, and quarterly "problem/programs" lists.¹¹ A review of the public inspection file of Station WWHT by Mr. Beickelman revealed that file that did not contain an annual ownership report for 1992, any Ownership Report or certification since May 1990, or a problem/programs list for the first three months of 1993. See Exhibit FF.

While the rule violations cited in the proceeding four paragraphs, if considered individually, might not compel the addition of a qualifying issue, under the circumstance present they serve to highlight Casagrande's disregard for the Commission's Rules. Accordingly, these violations should be considered under the issues specified pursuant to this petition.

E. Summary of Operational Violations and Misrepresentations

The Commission has emphasized that it is extremely concerned with "misconduct disclosing a pervasive unwillingness or inability to meet the basic responsibilities of a licensee." Faulkner Radio, Inc., 88 FCC 2d 612, 616 (1981), citing Star Stations of Indiana, Inc., 51 FCC 2d 95 (1975), aff'd sub nom. Star Broadcasting, Inc. v. FCC, 527 F.2d 853 (D.C. Cir. 1975), cert denied, 425 U.S. 992 (1976); United Broadcasting Co., 49 RR 2d 597, 601-03 (1981). Here, at a minimum, a prima facie showing has been made as to the unwillingness or inability of Casagrande to meet the basic responsibilities of a licensee. Time and time again he has failed

¹¹ Or as stated in Section 73.3526(a)(9), "a list of programs that have provided the station's most significant treatment of community issues during the proceeding three-month period."

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to adhere to the Commission's rules. Not only has he failed to report information when required to do so, but repeatedly has operated stations in flagrant and substantial violation of the Commission's technical rules.

His contumacy is well demonstrated by the circumstances surrounding modification of the facilities of WCFL(FM), Morris, Illinois. Not only did M.M. Group put the station on the

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Regardless of the manner in which we have historically described the matters before us, our concerns when reviewing FCC-related misconduct in a licensing context have always had a relationship